IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1764 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMBALAL SHANKARBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MURALI N DEVNANI for Applicant(s) : 1,
MR MR MENGDEY, APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/10/2007

ORAL JUDGMENT

1. Rule. Learned APP Shri Mengdey waives service of notice of rule on behalf of respondent State.

2. The petitioner herein has challenged an order dated 31.1.2007 passed by the learned JMFC, Nadiad as upheld by learned Additional Sessions Judge, Fast Track Court by an order dated 30.4.2007. The petitioner had applied to the learned Magistrate for registration and issuance of Certificate of Birth of his Son Arunkumar Ambalal Patel who according to the petitioner was born at Gutaal Village on 1.3.1966. This application came to be turned down by the learned Magistrate primarily on the ground that in his application the petitioner had not disclosed that his son resides at Kenya and holds a Kenyan passport. These facts came to light when the learned Magistrate insisted on the presence of son before the Court upon which the petitioner passed above-mentioned pursis. It was therefore, the opinion of learned Magistrate that petitioner has not come with clean hands and that therefore, his application cannot be granted. Learned Magistrate also observed that if the petitioner establishes that his son was actually born on Gutaal on 1.3.1966, his birth can be ordered to be registered. However, since the petitioner has not come to the Court with clean hands, his application should be rejected. Learned Additional Sessions Judge concurred with view of the learned Magistrate and rejected the application of the petitioner.

3. Having heard the learned advocates appearing for

the parties, I find that the failure on part of the petitioner to disclose his son's present residence or that he holds passport of Kenya, ought not to have been the sole ground for rejection of his application. This however, does not mean that that the petitioner can succeed without producing sufficient material or without establishing before the Competent Court that his son was actually born on 1.3.1966 at the place declared by him in the application. To do so, the petitioner shall have to produce necessary material including the full details about the passport/s held by his son and the manner in which such passport/s was/were obtained.

4. With these directions, the petition is partially allowed. Impugned order dated 31.1.2007 passed by the learned JMFC, Nadiad as upheld by learned Additional Sessions Judge, Fast Track Court by an order dated 30.4.2007 are quashed. The proceedings be remanded to the learned Magistrate for fresh consideration in accordance with law.

5. The petition is disposed of. Rule made absolute to the above extent.

(Akil Kureshi,J.)

(raghu)